

PRESIDING OFFICER'S
RULING NO. MC99-1/2

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Renewal of Experimental Classification and Fees
For Weight-Averaged Nonletter-Size
Business Reply Mail

Docket No. MC99-1

PRESIDING OFFICER'S RULING ON POSTAL SERVICE MOTIONS
FOR WAIVER OF CERTAIN REQUIREMENTS

(April 9, 1999)

The Postal Service's request in this docket was accompanied by two motions seeking waiver of certain filing requirements. See Motion of United States Postal Service for Waiver of Certain Filing Requirements Incorporated in the Commission's Rules of Practice and Procedure ("Motion 1") and Motion of the United States Postal Service for Waiver of Rule 67c(a)(1) ("Motion 2"). Both motions were filed March 10, 1999. Commission Order No. 1233, issued March 16, 1999, directed participants to answer these motions by April 5, 1999.

Motion 1 — waiver of certain requirements in the general rules of practice calling for production of data and information. The Service seeks waiver of three subsections of rule 64, along with waiver of provisions of rule 54 incorporated therein or otherwise deemed applicable. Both rules generally define the data, information, and explanations the Service must include in formal requests for a rate or classification change. (Rule 54 for rate and fee changes; rule 64 for classification changes.)

With respect to rule 64, the Service seeks waiver of subsections (b)(3), (d) and (h). These provisions require production of certain cost, volume and revenue information. In particular, rule 64(b)(3) requires the Service to "identify the degree of

economic substitutability between the various classes and subclasses, e.g., a description of cross-elasticity of demand as between various classes of mail.” Rule 64(d), referring to provisions in rule 54, requires the Service to provide a statement showing the effects of the proposed changes in the classification schedule upon attributed and assigned costs, total accrued costs, and total revenues. Rule 64(h), also referring to rule 54, requires information about total costs, revenues and volumes, as well as information about costs, revenues, and volumes associated with categories of mail and special services other than weight-averaged nonletter-size Business Reply Mail (BRM). The Service indicates that the rule 54 provisions referred to in rule 64, or those that might otherwise apply, are subsections (b)(3), (d), (f)-(h), (i), (k) and (l)(ii).

The Service invokes waiver under provisions authorizing the Commission to grant this relief upon a showing of good cause. *Id.* at 2. Rule 54(r), generally limited to minor rate cases, conditions waiver on a demonstration that the proposed change in rates or fees “does not significantly change the then effective rates and fees or alter the cost-revenue relationships of the various classes and types of postal services.” Rule 64(h)(3) requires a determination that the proposed classification change does not significantly change the rates and fees or cost-revenue relationships referred to in rule 54.

The Service’s rationale for seeking waiver. In support of its motion, the Service generally notes that waiver would be in the public interest because it would help the Commission expedite resolution of the Postal Service’s request, thereby leading to creation of a valuable service for the recipients of nonletter-size Business Reply Mail (BRM). Motion 1 at 5. More specifically, the Service asserts that since it is not requesting a material change to any classification or fee, the condition set out in rule 64(h)(1) is satisfied. *Id.* at 2. It also notes that the request for an extension does not establish a new special service.

The Service provides several examples illustrating reasons why production of the information or data called for in rule 54 is inapposite, has already been provided in the Docket No. MC97-1, or is not necessarily useful in the context of this request. It notes,

for example, that to the extent that total cost-revenue relationships might be implicated, its proposal would not result in changes to those relationships significant enough to warrant application rule 54(b)(3)'s requirement of information regarding economic substitutability. *Id.* It also contends that rule 54(d)'s requirement of data regarding distance traveled by mail pieces is of little importance here. *Id.* at 2-3.

Similarly, the Service dismisses the need for rule 54(f)'s requirement of detailed and extensive information regarding total functionalized accrued costs of the Postal Service, including test year estimates, and total accrued costs for prior fiscal years (as required by rule 54(g)). It also argues that separation of cost estimates attributed and assigned to each class and subclass of mail, along with an explanation of the methodology used to derive such costs (under rule 54(h)), is unnecessary.

As to 54(i)'s requirement regarding information pertinent to the basis for the experimental fees proposed to be in effect during the requested extension, the Service notes that this was provided in Docket No. MC97-1.

The Service also states that no additional participants are expected to join the experiment during the extension period, and that current fees would still be in effect, so there is not likely to be any change in cost or revenue impact. Moreover, the Service asserts that even if effects on any other categories of mail or special services could be demonstrated to result from continuation of the experiment, those effects would be so small as to be totally inconsequential. *Id.* at 4.

Disposition. The Office of the Consumer Advocate (OCA) is the only participant that affirmatively addresses the requested waiver, and does not object. See April 5, 1999 OCA Comments in Response to Order No. 1233 and Answers to Motions of United States Postal Service ("OCA Answer"). Given the absence of objections and a finding that the Service has shown that the conditions for waiver have been met, its request is granted. The requested DMCS changes, as the Service notes, are extremely limited and will not affect the vast majority of postal products and services. *Id.* at 4. The proposed experiment is not expected to have cost or revenue consequences warranting application of the detailed requirements referenced in the Service's motion. Moreover,

as the Service has shown, some of the information was already provided in the original docket (MC97-1) or would not be useful in the context of this proceeding.

Motion 2 — waiver of rule 67c(a)(1). The Service also moves for waiver of certain provisions of rule 67c(a)(1) that may be applicable to its request for renewal of the experimental classification and fees for weight-averaged nonletter-size BRM. The rule at issue requires the Service, with respect to data called for by rule 64, to describe the means it proposes to employ to collect the data or to state with particularity why such data are unnecessary. Motion 2 at 1.

In support of its request for waiver, the Service notes that its sole objective in this docket is to obtain the authority to extend a portion of the current nonletter-size BRM experiment beyond its upcoming expiration date to resolve administrative and technical issues related to the implementation of the permanent classification and fees requested in Docket No. MC99-2. *Id.* at 1-2. The Service further states it believes its Docket No. MC99-2 filing demonstrates that “the paramount objectives of Docket No. MC97-1 have been achieved — the production of sufficient data to permit analysis of whether a permanent classification and fees should be established.” *Id.* at 2.

Therefore, the Service says that requiring it to collect additional data reflecting its resolution of the administrative and technical issues described in the Docket No. MC99-1 testimony of witness Kiefer would serve no significant purpose. *Id.* at 2. It further notes that some of that work is already underway, and that every effort is being made to complete it expeditiously. *Id.*

The Service contends that “the very limited purpose” of its Docket No. MC99-1 request and the availability of detailed cost data in Docket No. MC99-2 concerning the estimated costs associated with the proposed permanent classification and fees render unnecessary the rule 67c(a)(1) requirement that the Service file a new plan in the instant docket describing plans to collect data regarding steps it will take during the requested temporary “renewal” phase of the experiment to achieve a level of readiness sufficient to implement a permanent classification and fees. *Id.* at 3-4. It also invokes

the flexibility envisioned by the experimental rules as a reason for granting the requested waiver. *Id.* at 4.

The only participant addressing the Service's motion — the OCA — agrees with the Service's request as it relates to submission of a new data collection plan, but objects to the extent the Service asks to be relieved of current data collection requirements. OCA Answer at 5. In support of its position, the OCA asserts that there is significant potential for delay in implementing permanent classification and fees. In particular, it suggests that implementation may be complicated by management's recently-announced freeze on computer system changes pending resolution of "Y2K" issues.

Disposition. The Service has made a convincing case that requiring it to file a plan addressing collection of data on execution of the administrative and technical details involved in the extension phase of the experiment is not appropriate. This could contribute, as the Service indicates, to considerable delay in completing remaining work. Moreover, the efforts underway during the extension are not as readily suited to the type of measurement envisioned in the Commission's rules, and the Service's filing generally outlines the scope of the additional work. Therefore, the Service's request is granted with respect to waiver of a new data collection plan addressing execution of administrative and technical details.

It is less clear whether the Service should be excused from continuing to collect the periodic data addressed in the Commission's Docket No. MC97-1 order. However, the Service maintains that the main body of data needed for consideration of permanent status has been collected and filed, and believes no significant purpose would be served by requiring it to continue this activity. *See generally* Docket No. MC99-1, Tr. 1 at 17-19. The OCA, on the other hand, believes it would be prudent to require continued collection, given a concern about delayed implementation.

On its face, it seems that continued collection would be a routine expectation during the extension phase of an experiment, and would not materially interfere with, or distract from, concluding the experiment. However, the circumstances of this extension

are somewhat novel and, as the Service indicates, may warrant application of a different standard. At this point, given the type of details the Service will be addressing during the extension, the unlikelihood that any new participants will be joining the experiment, the Service's representations regarding the resolution of "Y2K" problems, and the possibility that continued data collection could take time away from completion of other, more essential tasks, the Service's request for waiver is granted on the terms it requested. However, should delayed implementation become a more immediate issue or other data concerns emerge, I reserve the right to direct the Service to resume collection and reporting on terms that suit the circumstances.

RULING

1. The March 10, 1999 Motion of United States Postal Service for Waiver of Certain Filing Requirements Incorporated in the Commission's Rules of Practice and Procedure is granted.

2. The March 10, 1999 Motion of the United States Postal Service for Waiver of Rule 67c(a)(1) is granted, subject to the reservation noted in the body of this ruling.

George A. Omas
Presiding Officer